

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	17-CR-2778 MCA
)	
KLAYTON WIMBERLY,)	
)	
Defendant.)	

**MOTION FOR PSYCHOLOGICAL EVALUATION
AND FOR PAYMENT UNDER THE CRIMINAL JUSTICE ACT**

Defendant Klayton Wimberly, by and through his counsel of record, Jason Bowles of Bowles Law Firm, hereby moves the Court for an Order allowing a psychological evaluation of the Defendant be conducted by an expert chosen by Defendant, and as grounds for said motion, Defendant states as follows:

Mr. Wimberly Johnson is charged by indictment with Bank Fraud and Aiding and Abetting.

18 USCS § 4241 allows for a Court to Order a psychological examination and report. 18

USCS § 4242 (a)(b)(c) provides:

(a) Motion to determine competency of defendant. – At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) Psychiatric or psychological examination and report – Prior to the date of the hearing, the court may order that a psychiatric and psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247 (b) and (c).

(c) Hearing – The hearing shall be conducted pursuant to the provisions of section 4247(d).

In order to provide adequate representation to Mr. Wimberly, counsel needs to initially determine if he is competent. Mr. Wimberly raised with counsel that he has been found incompetent in the past in state court. This competency information can be derived from a court ordered psychological evaluation in order to receive a more comprehensive report.

§ 4247 (c) governs the contents of the psychiatric or psychological report and provides in pertinent part:

A psychiatric or psychological report ordered pursuant to this chapter shall be prepared by the examiner designated to conduct the psychiatric or psychological examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include--

- (1) the person's history and present symptoms;
- (2) a description of the psychiatric, psychological, and medical tests that were employed and their results;
- (3) the examiner's findings; and
- (4) the examiner's opinions as to diagnosis, prognosis, and--

(F) if the examination is ordered as a part of a presentence investigation, any recommendation the examiner may have as to how the mental condition of the defendant should affect the sentence.

Mr. Wimberly is indigent and his counsel has been appointed by the Court pursuant to the Criminal Justice Act. Defendant therefore seeks this Court's prior authorization to retain an expert of his own choosing for purposes of conducting the psychological evaluation of Defendant.

Assistant United States Attorney Paul Mysliwiec takes no position on this motion.

WHEREFORE, Defendant Klayton Wimberly respectfully requests this Court to grant his motion and order a psychological evaluation by an expert chosen by the Defendant and for authorization of payment of the expert through Criminal Justice Act funds.

Respectfully submitted,

/s/ Jason Bowles
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I hereby certify that a true and correct copy
of the foregoing was electronically submitted
this 5th day of January, 2018 to:

Paul Mysliwicz
Assistant United States Attorney

/s/ Jason Bowles
Jason Bowles
Bowles Law Firm